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CAPTION
No. 878

In the Supreme Court of the United States

Appeal from
The Court of Appeals of Logan County, Ohio

HAROLD C. FOREMAN and EDITH L. FOREMAN
Appellants
vs.
THE CITY OF BELLEFONTAINE
Appellee

MOTION TO DISMISS APPEAL

HAROLD C. FOREMAN and EDITH L. FOREMAN
124 E. Spring Ave.
Bellefontaine, Ohio.
Appellants, In Propria Persona

JAMES B. WEST
126½ South Main St.
Bellefontaine, Ohio
City Solicitor and Attorney for Appellee

CIVIL ACTION No. 878

In the Supreme Court of the United States

HAROLD C. FOREMAN and EDITH L. FOREMAN
Husband and Wife
124 E. Spring Ave.
Bellefontaine, Ohio
Appellants

vs.

THE CITY OF BELLEFONTAINE
Bellefontaine, Ohio
Appellee

MOTION TO DISMISS APPEAL

Pursuant to Rule 16 of the Revised Rules of the Supreme Court of the United States, the Appellee moves to dismiss the appeal from the decision of the Supreme Court of the State of Ohio. The grounds of this motion are as follows:

I. The validity of a state statute was not expressly passed on by the state court.

II. The judgment sought to be reviewed rests on an adequate non-federal basis.

II. The appeal does not present a substantial federal question.

Respectfully submitted,

THE CITY OF BELLEFONTAINE,
OHIO, APPELLEE

By: James B. West
City Attorney
126½ South Main Street
Bellefontaine, Ohio

FACTS IN SUPPORT OF MOTION TO DISMISS

Apellants rely on U. S. C. 28:1257 (2) as conferring jurisdiction upon the United States Supreme Court, which section provides in part as follows:

> U. S. C. 28:1257. State courts; appeal: certiorari
>
> Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:
>
> (2) By appeal, where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity.

The decision of the Supreme Court of Ohio, rendered December 5, 1962, in Case No. 37687, and which is printed in its entirety on Page 14 of the Appendix in Appellants' Statement In Support Of Jurisdiction, shows clearly that the validity of a state statute was neither drawn into question nor expressly passed on by the Supreme Court of the State of Ohio.

Appellee, in support of its motion to dismiss, further urges that the decisions of the lower courts were based on an adequate non-federal basis. The case was originally heard in the Logan County, Ohio, Common Pleas Court upon an agreed stipulation of fact, entered into in writing and signed by the parties. Although the Appellants charged in their original petition that their constitutional rights had been invaded, there was a failure of proof of this fact; and the courts disposed of the case on other than constitutional grounds.

The Appellee further urges that the appeal does not present a substantial federal question although Appellants recite in their statement in support of jur-

isdiction that an ordinance of the City of Bellcfontaire and several statutes of the State of Ohio are in conflict with the Constitution of the United States. The Appellee contends, however, that Appellants' allegations of unconstitutionality are directed at a group of state statutes and are too general and too indefinite to raise constitutional questions and fail to define with particularity what portions may have offended claimed constitutional rights. This contention was passed on by this court in the case of Staub vs. Baxley, 355 U. S. 313, 2L. Ed. 2d 302.

Respectfully submitted,

James B. West
Attorney for Appellee
126½ South Main Street
Bellefontaine, Ohio

CERTIFICATE

I, James B. West, attorney for the City of Bellefontaine, Ohio, appellee herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 22nd day of March, 1963, I served a copy of the foregoing Motion on the appellants, Harold C. Foreman and Edith L. Foreman, by mailing a copy in a duly addressed envelope, with postage prepaid, to 124 E. Spring Avenue, Bellefontaine, Ohio.

Signed _____

James B. West, Attorney
for City of Bellefontaine, Ohio,
126½ S. Main Street
Bellefontaine, Ohio